

Exhibit “C”

VOLUME I
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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-30189-MAP

PAUL T. PAPADAKIS, *
PLAINTIFF, *
-VS- *
CSX TRANSPORTATION, INC., *
DEFENDANT. *

Deposition of ERNEST GAILOR, taken on behalf of the Defendant, pursuant to Notice under the Massachusetts Rules of Civil Procedure, before Daryll Palma Watts, a Professional Court Reporter and Notary Public, in and for the Commonwealth of Massachusetts, at the offices of FLYNN & ASSOCIATES, P.C., 400 Crown Colony Drive, Quincy, Massachusetts, on Tuesday, October 11, 2005, commencing at 10:46 a.m.

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BOSTON, MASSACHUSETTS 02128
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APPEARANCES:

MICHAEL B. FLYNN, ESQUIRE
VALERIE A. MURPHY, ESQUIRE
FLYNN & ASSOCIATES, P.C.
400 Crown Colony Drive - Suite 200
Quincy, Massachusetts 02169
Counsel for: The Defendant.

ROBERT M. BYRNE, JR., ESQUIRE
THORNTON & NAUMES, LLP
100 Summer Street
Boston, Massachusetts 02110
Counsel for: The Plaintiff.

ALSO PRESENT:
Mr. Gary Baker

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I N D E X

Witness Direct Cross Redirect
ERNEST GAILOR
By Mr. Flynn 4

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P R O C E E D I N G S

* * *

MR. FLYNN: The usual stipulations; objections, except as to form, and motions to strike reserved until the time of trial.

MR. BYRNE: Agreed.

MR. FLYNN: He'll read and sign?

MR. BYRNE: Agreed.

MR. FLYNN: Waive the notary.

MR. BYRNE: Agreed.

DEPONENT, ERNEST GAILOR, having produced satisfactory identification by means of a New York Driver's License, being sworn, deposes and states as follows:

EXAMINATION BY MR. FLYNN:

Q Sir, would you please state your name for the record?

A Ernest J. Gailor.

Q What's your current residential address?

A 4000 Silver Beach Road, Malta Ridge, New York.

Q What do you do for a living?

A I'm an engineer.

Q What kind of an engineer?

A Civil, environmental, structural.

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1 Q Mr. Papadakis testified that it did not, you know
2 that, don't you?
3 A I know that. But your maintenance guy says it
4 went over center.
5 Q Wait, wait, wait. Let's talk about --
6 MR. BYRNE: Objection.
7 Q Let's talk about Mr. Papadakis.
8 MR. BYRNE: Objection. You should let the
9 witness complete his answer.
10 Q You did, didn't you?
11 A Well I was discussing now the maintenance people
12 had said that it overcammed or over-centered and
13 that they had to bring it back around and then it
14 worked properly. And then you had a memo issued
15 identifying that this is what had happened to the
16 device and that it had been repaired. And then
17 there was a subsequent suggestion as to what they
18 should do to make sure this doesn't happen again.
19 Q What happened to Mr. Papadakis --
20 MR. BYRNE: Is your answer complete?
21 THE WITNESS: Yes. I'm sorry.
22 Q What happened to Mr. Papadakis was unwitnessed,
23 correct?
24 A Correct.

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1 Q So he's the only one who actually saw what
2 happened to him, correct?
3 A Correct.
4 Q The memo came from a fellow named Mr. Evers,
5 correct?
6 A Correct.
7 Q He's out in Selkirk, right?
8 A Correct.
9 Q He never saw what happened, did he?
10 A Only was told, that's correct.
11 Q You've reviewed his deposition, correct?
12 A Correct.
13 Q You know that it's based on what other people
14 told him, correct?
15 A Correct.
16 Q But not including the plaintiff, correct?
17 A Correct.
18 Q In other words, it's secondhand hearsay as we
19 like to call it, correct?
20 MR. BYRNE: Objection.
21 Q In other words, somebody, Mr. Papadakis told
22 somebody something and that somebody then told
23 Mr. Evers what happened and then he wrote his
24 memo; is that your understanding of how it

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1 occurred?
2 MR. BYRNE: Objection.
3 A My understanding is is that the maintenance
4 people found what happened, repaired it and then
5 passed that information along.
6 Q The maintenance people being Mr. Ebert?
7 A Correct.
8 Q At TNT?
9 A Yes, TNT.
10 Q By the time it got out to TNT what we know is
11 that the wheel was over-centered?
12 A Correct.
13 Q In other words, the pilot arm and the wheel were
14 pointing out toward the front of the vehicle, not
15 away from the vehicle as opposed to its normal
16 position which would be back into the vehicle?
17 A By on center, correct.
18 Q You understand from reviewing Mr. Papadakis'
19 deposition that it's his testimony that that's
20 not what occurred at all, correct?
21 A I understand. That's correct.
22 Q Mr. Papadakis' testimony was that the wheel never
23 went over center, correct?
24 A Correct.

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1 Q And that the only thing that he had a problem
2 with was getting it back up into the highway
3 position, correct?
4 A Correct.
5 Q In your opinion -- to form the basis of your
6 opinions, which we'll get to a little bit later,
7 but to get to your opinions do you completely
8 disregard what Mr. Papadakis says?
9 A There are portions of his testimony that I do
10 disregard.
11 Q That portion being what he says happened to the
12 device itself, correct?
13 A Correct.
14 Q You have to completely disregard that to get to
15 your opinion, correct?
16 A Correct.
17 Q Because if you believe what he said there's no
18 evidence of any defect, correct?
19 MR. BYRNE: Objection.
20 A If I believe what he said there was a defect, but
21 I was unable to determine what it was.
22 Q Something happened when he tried to put it back
23 up, but you have no way of explaining it,
24 correct?

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1 MR. BYRNE: Objection.
 2 A Short of a material failure.
 3 Q There's no evidence of a material failure?
 4 A I have no evidence of a material failure.
 5 Q But the evidence is that since -- it was working
 6 properly once Mr. Ebert brought it back into the
 7 proper position and the evidence is actually to
 8 the contrary; that, in fact, there was no
 9 material there, correct?
 10 A Correct.
 11 Q Then the vehicle was put in service and is still
 12 in service today without a recurrence of any
 13 material failure, correct?
 14 MR. BYRNE: Objection.
 15 A I don't know that.
 16 Q Well you have been given subsequent maintenance
 17 and repair records, correct?
 18 A Up until a date, up until the date that I have
 19 information, yes.
 20 Q About six months ago, a year ago?
 21 A I know of nothing other than up to that date.
 22 Q So the vehicle continued -- so let's just review
 23 it. Ebert inspects it and once he gets it back
 24 to the proper position it works properly, right?

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1 reasonable certainty, correct?
 2 A That's true.
 3 Q So then to come to your opinion which you have
 4 based on a reasonable degree of certainty you
 5 start with the assumption that the wheel had
 6 overcammed, correct?
 7 A I don't think I started with that assumption.
 8 Initially I was looking for some kind of
 9 mechanical error, some material defect, a broken
 10 shaft, a broken key, any of those items. But I
 11 didn't see evidence or there was no evidence
 12 presented to me that indicated any of that was
 13 there. From there we stepped into the
 14 overcamming.
 15 Q So your first instinct in this case based on your
 16 professional experience was something must have
 17 been wrong with the device in terms of its
 18 materials, correct?
 19 A Correct.
 20 Q Did you express that opinion to anybody?
 21 A Oh, yes.
 22 Q Did you tell plaintiff's counsel that?
 23 A I believe we talked about it.
 24 Q Were you persuaded otherwise?

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1 A That's my understanding.
 2 Q So that's evidence that there was no material
 3 defect, correct?
 4 A Correct.
 5 Q Based on the repair records that you have to date
 6 or to the point that you got them the vehicle was
 7 in service for several years afterwards without
 8 any recurrence of this problem, correct?
 9 A Up to the limit of the records, correct.
 10 Q That's evidence again that there was no material
 11 defect at that time or since, correct?
 12 A Correct.
 13 Q To get to your opinion you have to disregard how
 14 Mr. Papadakis described the incident as having
 15 happened, correct?
 16 MR. BYRNE: Objection.
 17 A His descriptions of how he dropped the gear and
 18 then how he tried to raise the gear I believe are
 19 accurate. His descriptions of how he was hurt
 20 are probably accurate. His descriptions of what
 21 he thinks happened to the gear I don't think are
 22 accurate.
 23 Q That's because you cannot explain how they would
 24 have or could have occurred to any degree of

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1 A Well I went out and did my inspection. Looked at
 2 the equipment. Looked at the maintenance
 3 records. I really was looking for a materials
 4 list as to what was used to fix this thing, and
 5 there was none. At that time I had to step back
 6 and go a different direction with it.
 7 Q So even up to the point of the inspection you
 8 were still thinking there's got to be a material
 9 defect?
 10 A Correct.
 11 Q You weren't thinking of overcamming?
 12 A I wasn't.
 13 Q Or how the device could come to overcam?
 14 A Well I knew it could. I just didn't -- from what
 15 I understood of the accident I didn't believe
 16 that overcamming had been the cause.
 17 Q When you did your inspection you found no
 18 evidence of any material defect, right?
 19 A Correct.
 20 Q Was it at that point that you started to drop
 21 that opinion from the list of possibilities?
 22 A I believe -- I don't know if we got maintenance
 23 records after that. I know we got some
 24 maintenance records well after that. But I don't

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